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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96559; File No. SR-NYSEARCA-2022-84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Representations Relating to the Stance Equity ESG Large Cap Core ETF

December 21, 2022

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on December 15, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to certain representations made in the proposed rule change previously filed with the Securities and Exchange Commission (the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

“Commission” or “SEC”) pursuant to Rule 19b-4 relating to the Stance Equity ESG Large Cap Core ETF (the “Target ETF”). Shares of the Target ETF are currently listed and traded on the Exchange under NYSE Arca Rule 8.601-E. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares of the Target ETF, under NYSE Arca Rule 8.601-E, which governs the listing and trading of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Shares of the Target ETF are currently

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95) (Approval of a Proposed Rule Change To Adopt NYSE Arca Rule 8.601-E To Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601-E). Rule 8.601-E(c)(1) provides that “[t]he term “Active Proxy Portfolio Share” means a security that (a) is issued by a investment company registered under the Investment

listed and traded on the Exchange under NYSE Arca Rule 8.601-E.⁵ The shares of the Target ETF are issued by The RBB Fund, Inc. (the “Issuer”), a corporation organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company.⁶

Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601-E(c)(2) provides that “[t]he term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601-E(c)(3) provides that “[t]he term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.”

⁵ The Commission previously approved the listing and trading of the shares of the Target ETF. See Securities Exchange Act Nos. 91266 (March 5, 2021) 86 FR 13930 (March 11, 2021) (SR-NYSEArca-2020-104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601-E) (“Approval Order”); and 90665 (December 15, 2020) 85 FR 83129 (December 21, 2020) (SR-NYSEArca-2020-104) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601-E) (“Notice”). (The Approval Order and the Notice are referred to collectively herein as the “Releases”).

⁶ The Issuer is registered under the Investment Company Act of 1940 (the “1940 Act”). On November 23, 2020, the Issuer filed a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Target ETF (File Nos. 033-20827 and 811-05518) (“Registration Statement”). The Issuer filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-15165), dated September 28, 2020 (“Application”).

The Hennessy Funds Trust has filed a combined prospectus and proxy statement (the “Proxy Statement”) with the Commission on Form N-14 describing a “Plan of Reorganization” pursuant to which the assets of the Target ETF will be merged into the Hennessy Stance ESG Large Cap ETF (“Acquiring ETF”), a series of the Hennessy Funds Trust.⁷ According to the Proxy Statement, the Target ETF has the same investment objective and investment strategies as the Acquiring ETF. Following approval of the Target ETF’s shareholders and closing of the Reorganization, the Target ETF will transfer all of its assets and liabilities (other than the excluded liabilities) to the Acquiring ETF in exchange for shares of the Acquiring ETF, with the Target ETF distributing shares of the Acquiring ETF pro rata to its shareholders. Shareholders of the Target ETF will thus effectively be converted into shareholders of the Acquiring ETF and will hold shares of the Acquiring ETF with the same NAV as shares of the Target ETF that they held prior to the Reorganization. Following the Reorganization, the Target ETF will be renamed as the Hennessy Stance ESG Large Cap ETF.

In this proposed rule change, the Exchange proposes to change certain representations made in the proposed rule change previously filed with the Commission pursuant to Rule 19b-4 relating to the Target ETF, as described above,⁸ which changes

The Issuer filed an amended Application on December 10, 2020, and a second amended Application on January 15, 2021. On February 26, 2021, the Commission issued an order (“Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34215, February 26, 2021).

⁷ See <https://www.sec.gov/Archives/edgar/data/891944/000089706922000614/cmw453.htm>.

⁸ See note 4 *supra*.

would be implemented as a result of the Reorganization.⁹ Following the Reorganization, the Acquiring ETF will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.601-E.

Hennessy Stance ESG Large Cap ETF

The Notice stated that shares of the Target ETF are issued by The RBB Fund, Inc. Following the Reorganization, shares will be issued by Hennessy Funds Trust. The Target ETF's investment adviser is Red Gate Advisers, LLC. Following the Reorganization, the investment adviser will be Hennessy Advisors, Inc.¹⁰ The Target

⁹ Stance Capital, LLC ("Stance Capital"), a sub-advisor to the Target ETF, represents that it will continue the day-to-day management of the Acquiring ETF's investment portfolio following the Reorganization in the manner described in the proposed rule change for the Target ETF referenced in note 4, *supra*, and the changes described herein will not be implemented until this proposed rule change is operative.

¹⁰ Hennessy Advisors, Inc. is an SEC-registered investment adviser. Hennessy Advisors is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) Hennessy Advisors, Inc. becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a "fire wall" with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Acquiring ETF's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Acquiring ETF's Actual Portfolio and/or Proxy Portfolio or changes thereto. In addition, any person related to the adviser, sub-adviser(s), or the Acquiring ETF who make decisions pertaining to the Acquiring ETF's Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding the Acquiring ETF's Actual Portfolio and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Acquiring ETF's Actual Portfolio and/or the Proxy Portfolio or changes thereto. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as

ETF's sub-advisers, Stance Capital and Vident Investment Advisory, LLC will remain the sub-advisers for the Acquiring ETF following the Reorganization.

The investment objective of the Acquiring ETF will remain unchanged. In addition, the Acquiring ETF's portfolio meets and will continue to meet the representations regarding the Target ETF's investments as described in the Releases.¹¹

compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. Hennessy Advisors filed an Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-15387), dated September 21, 2022 ("Hennessy Application"). Hennessy Advisors filed an amended Hennessy Application on November 3, 2022, and a second amended Hennessy Application on November 16, 2022. On December 14, 2022, the Commission issued an order ("Hennessy Exemptive Order") under the 1940 Act granting the exemptions requested in the Hennessy Application (Investment Company Act Release No. 34773, December 14, 2022). Shares of the Acquiring ETF are not currently listed and traded on the Exchange. The Exchange will not commence trading in shares of the Acquiring ETF until the Proxy Statement is effective.

¹¹ Pursuant to the Hennessy Application and Hennessy Exemptive Order, the permissible investments for the Acquiring ETF will continue to include only the following instruments: ETFs traded on a U.S. exchange, exchange-traded notes traded on a U.S. exchange, U.S. exchange-traded common stocks, U.S. exchange-traded preferred stocks, U.S. exchange-traded American Depositary Receipts, U.S. exchange-traded real estate investment trusts, U.S. exchange-traded commodity pools, U.S. exchange-traded metals trusts, U.S. exchange-traded currency trusts, and U.S. exchange-traded futures; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Acquiring ETF's Shares; exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Acquiring ETF's Shares; and cash and

Except for the changes noted above, all other representations made in the Releases remain unchanged. As stated above and in the Releases, shares of the Acquiring ETF shall also conform to the initial and continued listing criteria under Rule 8.601-E.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹² that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest. Hennessy Funds Trust has filed the Proxy Statement describing the Reorganization pursuant to which, following approval of the Target ETF's shareholders and closing of the Reorganization, all of the assets of the Stance Equity ESG Large Cap Core ETF will be transferred to a corresponding fund of the Hennessy Funds Trust, which will have the name Hennessy Stance ESG Large Cap ETF. This filing proposes to reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the trust entity issuing shares of the Target ETF and the adviser to the Target ETF. As noted above, Hennessy Advisors, Inc. is not registered

cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Acquiring ETF will also continue to not borrow for investment purposes, hold short positions, or purchase any securities that are illiquid investments at the time of purchase.

¹² 15 U.S.C. 78f(b)(5).

as a broker-dealer or affiliated with a broker-dealer. In the event (a) Hennessy Advisors, Inc. becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a “fire wall” with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Acquiring ETF’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Acquiring ETF’s Actual Portfolio and/or Proxy Portfolio or changes thereto. According to the Proxy Statement, the investment objective of the Acquiring ETF will be the same as that of the Target ETF following the Reorganization. The Exchange believes these changes will not adversely impact investors or Exchange trading. In addition, the Acquiring ETF’s portfolio meets and will continue to meet the representations regarding the Target ETF’s investments as described in the Releases. Except for the changes noted above, all other representations made in the Releases remain unchanged. As stated above and in the Releases, shares of the Acquiring ETF shall also conform to the initial and continued listing criteria under Rule 8.601-E.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will not impose a burden on competition and will benefit investors and the marketplace by permitting continued listing and trading of shares of the Acquiring ETF following implementation of the

changes described above that would follow the Reorganization, which changes would not impact the investment objective of the Acquiring ETF.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed changes reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the trust entity issuing shares of the Target ETF and the investment adviser to the Target ETF, and that the proposed changes do not raise novel regulatory issues and would not affect the public interest or the protection of investors. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2022-84 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2022-84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information

from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSEARCA-2022-84 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).